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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ROBERT TELLO, Defendant and Appellant.	B265286 (Los Angeles County Super. Ct. No. BA400717)

APPEAL from a judgment and postconviction order of the Superior Court of Los Angeles County, Stephen A. Marcus, Judge. Affirmed.

Jean Ballantine, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, and Allison H. Chung, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant and appellant Robert Tello guilty in counts 1, 3, and 6 of forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)(a)),[1] counts 2 and 4 of forcible rape (§ 261, subd. (a)(2)), counts 7 and 11 of first degree burglary (§ 459), count 12 of attempted grand theft auto (§§ 664/487, subd. (d)(1)), and count 13 of misdemeanor hit and run driving (Veh. Code, § 20002, subd. (a)). Defendant was found not guilty of carjacking (§ 215, subd. (a)) in count 10. On counts 1 through 4 and 6, the jury found true special allegations that the offenses were committed during the commission of a burglary and that the victim was over age 65 (§ 667.9, subd. (a)). The court found true the allegations that defendant had a prior conviction that qualified as a strike under the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and as a prior serious felony conviction (§ 667, subd. (a)).

The court imposed both determinate and indeterminate sentences. The determinate sentence totaled 17 years 8 months in state prison, consisting of the high term of six years on the burglary in count 11, doubled to 12 years based on defendant's prior strike conviction, and the midterm of four months for attempted grand theft auto in count 12, doubled to eight months due to the prior strike conviction, plus a five-year enhancement for the prior serious felony conviction. The court stayed the sentence for burglary in count 7 under section 654. On indeterminate sentencing, in counts 1, 3, and 6 charging forcible oral copulation, as well as counts 2 and 4 charging forcible rape, the court imposed 15 years to life in state prison, doubled to 30 years to life based on the prior strike conviction. The sentences for counts 1, 2, and 6 were ordered to run consecutively, and the sentences for counts 3 and 5 were to run concurrently. For each count involving an indeterminate sentence, the court added a one-year enhancement based on the victim's age and a five-year enhancement for the prior serious felony conviction.

In his timely appeal, defendant asks this court to reverse his rape convictions (counts 2 and 4) based on instructional error, and reverse one burglary conviction (count

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[1] All further statutory references are to the Penal Code unless otherwise stated.

11) based on insufficient evidence, instructional error, and failure to instruct the jury on the lesser included offense of attempted burglary. He also contends remand is required for further proceedings on his petition for disclosure of juror identifying information. We affirm the judgment as well as the court's order denying defendant's postconviction petition for juror identifying information.

FACTUAL AND PROCEDURAL BACKGROUND

We limit our review of the facts and procedure to information relevant to defendant's contentions on appeal.

Burglary

In the early morning of July 21, 2012, Hal Stevens heard a crashing sound, but did not get up to investigate. Around 6:00 a.m., Stevens and his brother-in-law discovered that a screen had been removed, and that the outer pane of a double-paned window was shattered. There was blood on pieces of the broken glass, and a blood trail between the ground below the window, the gate, and driveway.[2]

Sexual Assaults

On July 21, 2012, Mary C., a 77-year-old woman living in a two-story house with a roommate, was sleeping in the living room downstairs, while her roommate was sleeping in an upstairs bedroom. Around 4:00 a.m., Mary heard glass breaking and dogs barking. She looked out a window and saw a person dressed in black walking up the hill, and then later back down the hill. She lost sight of the person, then discovered defendant in the downstairs hallway of her home.

Defendant seemed afraid of Mary's dog. Mary complied with defendant's request to put her dog outside, but then started crying because "[i]t finally dawned on me that I

[2] There is no testimony linking defendant to the blood on the broken glass, perhaps because the criminologist did not recover samples.

was there with someone I shouldn't be there with at 4:00 in the morning . . . ." She considered trying to get away, but did not think she would be successful. According to Mary, defendant tried to get her to be quiet and come back into the house. As soon as they reentered the house, defendant's attitude "turned very evil." He put his arm around Mary's neck in a chokehold, told her he had a gun, and threatened to kill her by saying, "I've killed before, so I'm going to kill you. Just be quiet." Mary did not see a gun, but felt something pressed against her head, and believed defendant had a gun and would kill her if she did not comply with his demands. As he directed her to the living room, she told him she was 77 years old.

In the living room, defendant pulled down his pants and underwear, sat on the sofa, and forced Mary to orally copulate him, pulling her hair and sometimes causing her to gag. Mary was 25 years old the last time she had sex with a man. After about an hour of orally copulating defendant, Mary's mouth and lips were sore and her knee was hurting. She asked if they could do something else, and defendant directed her to straddle him. She pulled her pants and underwear partway down and straddled him, with his penis penetrating her vagina. After about 10 minutes, he directed her to go back to orally copulating him, in part because the straddling position was uncomfortable and painful for her. Over the course of two hours, Mary alternated between three instances of oral copulation and two instances of vaginal penetration. At one point, Mary noticed defendant's arm was bleeding. She offered to help clean up his arm, but he said no. When she saw the blood, she also thought he had killed her friend upstairs.

Around 6:30 a.m., Mary heard a cough from upstairs and, in an effort to protect her roommate from harm, suggested to defendant that they leave the house to get coffee and breakfast. Defendant agreed, and Mary drove first to IHOP, then to McDonald's. Defendant rode mostly in a reclined position in the passenger seat of Mary's car, but sat upright to eat the food she purchased at the McDonald's drive-through window. Mary decided against trying to attract anyone's attention.

Mary next drove to the Northeast Division Station of the Los Angeles Police Department, after defendant kept saying he needed a gun and some money. Defendant

prevented her from leaving the car, and Mary returned home. Defendant knew the area well and directed Mary on which streets to take, pointing out his home and where he went to school during the drive. Near her home, Mary saw some of her neighbors, but decided against risking their involvement. She backed into her driveway, ran into her house and upstairs, and told her roommate, Rita, what had happened. Rita called 911, and within 20 minutes, 16 officers arrived at the house.

Defendant drove off in Mary's car, which was found about a quarter mile away later that morning, after it was involved in a collision.

Arrest, Identification, and Admissions

Police located and arrested defendant the same day the events described above took place. His right hand was wrapped in gauze. Police collected a DNA sample. Mary identified defendant in a photo six-pack on July 23, 2012.

Defendant waived his constitutional rights and agreed to be interviewed by detectives. He claimed he drank alcohol, smoked marijuana, blacked out, and woke up on someone's porch. He remembered pushing a window and causing it to snap. He initially stated he did not remember entering a woman's residence, but when police told him they had fingerprint and DNA evidence,[3] he said he remembered a woman and a dog in a house and a woman sucking on his penis, but denied forcing her to do so. He remembered the woman saying "oh, yeah, give it to me like that" while she was on her knees. He had no memory of vaginal intercourse with the woman. He recalled the sun coming up and going to McDonald's with the woman to get food. When he and the woman returned to the woman's house, she left the keys in the car when she got out, and he drove the car away, crashing it a short while later and then walking home. He said he thought the woman was probably about 40, and started crying when a detective told him the woman was 77 years old. He wrote a letter of apology to the woman

[3] In fact, the detectives did not have fingerprint or DNA evidence at the time of the interview, but claiming to have such evidence is a common, accepted investigative technique.

Prosecution

Mary and her roommate, Rita, testified about the events that took place in the early morning of July 21, 2012. The prosecution also called a number of witnesses from law enforcement to testify about their roles in investigating the charged offenses, including the collection and testing of evidence, and locating and arresting defendant.

Although no semen was found on Mary's sofa or as part of the sexual assault response team (SART) exam conducted by Beverly Wheeler, the blood stains on Mary's blouse and her sofa matched defendant's DNA profile. Wheeler testified about the process of conducting a SART exam, and testified that photographs from the exam showed petechia (pinpoint bruising) to Mary's hymen, which can be a sign of sexual assault. Wheeler testified that the petechia was consistent with Mary's account of the assault.

Defense

Defendant's best friend, Carlos Ramirez, testified he and defendant attended a party the evening of July 20, 2012, where defendant drank a large amount of alcohol. According to Ramirez, defendant did not usually get drunk or fall asleep after drinking, but that evening, defendant vomited around 2:00 or 3:00 a.m., became angry enough to punch a tree and a cement wall, and had a "power nap" for about five minutes while Ramirez was driving him home. They reached defendant's home sometime between 3:00 and 5:00 a.m., and Ramirez told defendant to "go sleep it off."

The defense also presented testimony about a past instance in March 2012 when defendant got very drunk and was acting bizarre and incoherent. A forensic psychiatrist testified about alcoholic blackouts and opined that the defendant's partial memories were consistent with a partial alcoholic blackout. A doctor testified that the results of Mary's SART exam included no evidence of penile/vaginal penetration, and no sign of apparent trauma to Mary's mouth or the area around her mouth that would be expected from oral copulation.

Conviction and Posttrial Motion and Petition

On October 7, 2014, the jury found defendant guilty on all counts except for carjacking (count 10). On April 10, 2015, defense counsel filed a motion for new trial and a petition for disclosure of juror identifying information. At a continued hearing on May 12, 2015, the court found that counsel's previously filed declaration did not make a prima facie showing of good cause, and denied the petition.

DISCUSSION

A. Counts 2 and 4, Rape By Force

Defendant contends the court's failure to instruct the jury on mistake of fact as to consent[4] requires reversal of his rape convictions. He argues the court had a sua sponte duty to give the instruction even in the absence of a defense request, and its failure to do so violated his rights to due process and constituted prejudicial error. We disagree.

When a defendant is charged with rape by force, a defendant may claim he mistakenly believed the victim consented to sex, a defense commonly referred to as a *Mayberry* defense. (*People v. Mayberry* (1975) 15 Cal.3d 143 (*Mayberry*).) The *Mayberry* defense "has two components, one subjective, and one objective. The subjective component asks whether the defendant honestly and in good faith, albeit mistakenly, believed that the victim consented to sexual intercourse. In order to satisfy this component, a defendant must adduce evidence of the victim's equivocal conduct on the basis of which he erroneously believed there was consent. [¶] In addition, the

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[4] The portion of the jury instruction on rape that addresses mistake of fact as to consent reads as follows: "[The defendant is not guilty of rape if he actually and reasonably believed that the woman consented to the intercourse [and actually and reasonably believed that she consented throughout the act of intercourse]. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman consented. If the People have not met this burden, you must find the defendant not guilty.]" (CALCRIM No. 1000 [Rape or Spousal Rape by Force, Fear, or Threats].)

defendant must satisfy the objective component, which asks whether the defendant's mistake regarding consent was reasonable under the circumstances. Thus, regardless of how strongly a defendant may subjectively believe a person has consented to sexual intercourse, that belief must be formed under circumstances society will tolerate as reasonable in order for the defendant to have adduced substantial evidence giving rise to a *Mayberry* instruction." (*People v. Williams* (1992) 4 Cal.4th 354, 360-361, fn. omitted (*Williams*).)

The trial court has no sua sponte duty to give a *Mayberry* instruction unless there is substantial evidence to support such a defense. (*People v. Maury* (2003) 30 Cal.4th 342, 424; see *Williams, supra*, 4 Cal.4th at p. 362 ["the instruction should not be given absent substantial evidence of equivocal conduct that would have led a defendant to reasonably and in good faith believe consent existed where it did not"].) It is therefore not an error to omit such an instruction where no request is made by the defendant and there is only minimal evidence to support the defense. For example, in *People v. Dominguez* (2006) 39 Cal.4th 1141, 1148 (*Dominguez*), the defendant did not rely on a *Mayberry* defense and did not request a *Mayberry* instruction, but later claimed the lower court erred by failing to give the instruction. The California Supreme Court rejected the defendant's claim of instructional error, noting, "[t]he right to a *Mayberry* instruction in the absence of a request thus depends on whether the defendant has proffered 'substantial evidence that the defendant honestly and reasonably, but mistakenly, believed that the victim consented to sexual intercourse.' [Citation.]" (*Ibid*.) In *Dominguez*, the court found there was not substantial evidence to support a theory that the defendant mistakenly believed the victim had consented. The defendant's semen was found in the victim's vagina, and the defendant testified at trial that he and the female victim had consensual sex. Because the defendant's testimony only supported a theory that the victim *actually* consented, not that defendant *mistakenly believed* she had consented, and the remaining evidence—that the victim was beaten and strangled and suffered severe trauma to her vagina and cervix—was inconsistent with a mistaken belief that she had

consented, the court did not err by failing to sua sponte give a *Mayberry* instruction. (*Id*. at p. 1149.)

Even with a defense request, it is not error for a court to refuse to give a *Mayberry* instruction if the evidence in support of the defense is insubstantial. In *People v. Hernandez* (2009) 180 Cal.App.4th 337, 345-346 (*Hernandez*), the Court of Appeal held that the trial court properly refused a defense request for a *Mayberry* instruction because there was no evidence that the defendant's subjective belief that the victim consented met the requirement of objective reasonableness. The defendant knew the victim from church, but had broken into the victim's home in the early hours of the morning. He was carrying a two-foot long metal bar, told her he had killed a policeman, threw her phones out of reach, and "gave her ten minutes to give in to his demands for sex or 'something bad was going to happen.'" She relented out of fear that the defendant would harm her or her two-year-old daughter. (*Id*. at p. 345.) The court pointed out that the victim's arguably equivocal conduct "must be viewed in the context of the circumstances surrounding the conduct . . . ." It was not error for the trial court to omit a *Mayberry* instruction because "it was unreasonable as a matter of law for Hernandez to believe the victim consented to sexual intercourse." (*Ibid*.)

Here, defendant did not request a *Mayberry* instruction, nor did he present any testimony or argument that he believed Mary had consented. Rather, defense counsel argued to the jury that defendant was so highly intoxicated that he could not remember what had happened, and that inconsistencies in Mary's version of events, coupled with the absence of any traces of semen, gave rise to reasonable doubt as to what had transpired in Mary's living room that morning. During a discussion of the jury instructions for rape and oral copulation, the court explained it had modified the standard instructions and asked the parties if the court left anything out that should have been included. After the court turned to the instructions for oral copulation, the prosecutor pointed out the absence of language concerning the defendant's reasonable belief that the woman consented. The court stated it did not think there was any evidence defendant believed Mary had consented, but if the parties wanted the language included, there was

no problem. The prosecutor referred to defendant's interview, and defendant's assertion that Mary had said something along the lines of "give it to me like that." Defense counsel was not against the change. When the court instructed the jury before deliberations, it included language addressing mistake of fact as to consent in the instructions for the oral copulation counts, but the same language was not included in the instructions for rape.

Focusing on evidence of "equivocal conduct" relevant to the question of whether defendant mistakenly believed Mary had consented to sex, we see only two pieces of relevant evidence. First, there was evidence that after Mary's knees, mouth, and lips were hurting from orally copulating defendant, Mary asked him if she could "do something else." Second, defendant claimed in the police interview that at some point when she was orally copulating defendant, Mary said, "Oh, yeah, give it to me like that." Defendant argues that other facts also constituted "equivocal conduct," such as the fact that Mary returned to the house after putting her dog outside and that after almost two hours of sexual conduct, Mary suggested that she and defendant go out for coffee, refused to let him drive her car, and drove to several places without trying to escape or alert other people that she was under duress. However, none of that information is relevant to whether defendant mistakenly believed Mary consented to sex. Rather, the evidence of the circumstances surrounding Mary's purportedly equivocal conduct demonstrates that even if defendant mistook Mary's statements as cues for consensual sex (a point never argued by defense counsel at trial), such a belief was not reasonable. This case is very similar to *Hernandez*, where the court emphasized that the conduct defendant pointed to as equivocal "must be viewed in the context of the circumstances surrounding" that conduct. (*Hernandez*, *supra*, 180 Cal.App.4th at p. 345.) Here, Mary encountered a stranger in a dark, interior stairwell around 4:30 in the morning. When he instructed her to get rid of the dog, she followed his instructions, but started crying once she realized what was happening. Mary testified that defendant was aggressive and "turned evil," stating he had a gun and had killed before. While she was orally copulating him, if she was not doing it right, he would yank her hair and use his hands to push her head down to

the point of making her gag. She felt like she had no choice but to do what he said, and at one point thought he had killed her roommate. Even if defendant had requested a *Mayberry* instruction, the trial court was under no obligation to give the instruction because based on the evidence produced at trial, "it was unreasonable as a matter of law for [defendant] to believe [Mary] consented to sexual intercourse." (*Hernandez*, *supra*, at p. 345.)

Even assuming there was substantial evidence to support a sua sponte *Mayberry* instruction, the error in failing to give the instruction was harmless under federal and state law standards of review. Defendant argues that because the court included a *Mayberry* instruction on oral copulation by force (CALCRIM No. 1015), but not on rape (CALCRIM No. 1000), the jury might have inferred that the defense was not available on the rape charges. Since the jury found the defendant guilty of three counts of oral copulation by force, and thus inherently rejected the *Mayberry* defense as to those charges, there is no reasonable possibility or probability the presence or absence of the *Mayberry* instruction would have made a difference in their deliberations on the rape counts. Given the state of the evidence, and defendant's strategy at trial, there was no reasonable possibility or probability the jury would have found defendant not guilty of rape had it received a *Mayberry* instruction on the rape charges. (*Chapman v. California* (1967) 386 U.S. 18, 24; Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

B. Count 11, Burglary of the Stevens' Residence

Defendant mounts a three-pronged attack on his conviction for burglarizing the Stevens' residence, contending the conviction must be reversed because (1) the jury's guilty verdict was not supported by sufficient evidence, (2) the court committed instructional error, and (3) the court erroneously failed to instruct the jury on the lesser included offense of attempted burglary. We reject all three arguments because they rely on an overbroad reading of the California Supreme Court's holding in *Magness v.*

Superior Court (2012) 54 Cal.4th 270 (*Magness*), which if accepted, would negate the holding of *People v. Valencia* (2002) 28 Cal.4th 1, 12-13 (*Valencia*), disapproved on other grounds in *People v. Yarbrough* (2012) 54 Cal.4th 889, 892-894 [disapproving dicta in *Valencia*].

Defendant argues that the prosecution failed to prove the "entry" element of burglary because the evidence only showed that a screen was removed and the outer pane of a double-paned window broken, while the inner pane remained intact. This argument ignores the holding in *Valencia* that "penetration into the area behind a window screen amounts to an entry of a building within the meaning of the burglary statute even when the window itself is closed and not penetrated." (*Valencia, supra,* 28 Cal.4th at p. 13.) Defendant points to language in *Magness* to argue that *Magness* implicitly overruled *Valencia* because the *Magness* court stated that for the entry element to be satisfied, "something that is outside must go inside . . . ." (*Magness, supra,* 54 Cal.4th at p. 279, italics omitted.) Taking into account the distinct facts and reasoning in *Magness* and *Valencia,* the holdings of the two Supreme Court cases can easily be harmonized in a way that leaves intact the holding of *Valencia* that penetration into the area behind a window screen, no matter how slight, is an "entry" in the meaning of the burglary statute.

In *Valencia,* a defendant pried window screens off of a bathroom window and a bedroom window, but did not successfully open the windows. At trial, the court instructed the jury that for there to have been an entry, "'a part of the defendant's body or some instrument, tool or other object under his control must have penetrated the area inside where the screen was normally affixed in the window frame in question.'" (*Valencia, supra,* 28 Cal.4th at p. 16.) The California Supreme Court upheld the defendant's conviction, reversing a Court of Appeal decision to the contrary, reasoning that it is not a question for the trier of fact to determine whether a window screen is part of the outer boundary of a building, but instead "we ourselves have concluded that a window screen is part of a building's outer boundary and, hence, that penetration into the area behind a window screen amounts to an entry of a building even when the window itself is closed and is not penetrated." (*Id*. at p. 15, fn. omitted.) The Supreme Court's

opinion included a lengthy discussion of the crime of burglary under California law, and examined a number of cases that considered what courts consider to be "entry" into the "outer boundary" of a building. (*Id*. at pp. 6-15.) Notably, the court acknowledged that "penetration into the area behind a window screen without penetration of the window itself usually will effect only a minimal entry of a building in terms of distance. But it has long been settled that '[a]ny kind of entry, complete or partial, . . . will' suffice. [Citation.] All that is needed is entry 'inside the premises' [citation], not entry inside *some inner part of* the premises. Furthermore, there is little doubt that even the minimal entry effected by penetration into the area behind a window screen—without penetration of the window itself—is 'the type of entry the burglary statute was intended to prevent.' [Citation.]" (*Id*. at pp. 12-13.)

In *Magness, supra*, 54 Cal.4th at page 274, a defendant used a remote control to open a garage door, but our Supreme Court concluded there was no "entry" because no part of the defendant's body or any tool or instrument crossed the outer boundary of the building. In its discussion of what constitutes physical entry, the opinion cites to the holding from *Valencia*: "In *People v. Nible* (1988) 200 Cal.App.3d 838, 845, the Court of Appeal held that 'when a screen which forms the outer barrier of a protected structure is penetrated, an entry has been made for purposes of the burglary statute.' We relied upon *Nible* to hold in *Valencia, supra*, 28 Cal.4th at page 11, that 'the penetration of' 'a building's outer boundary . . . is sufficient for entry.' As these cases show, the requirement of entry is not difficult to satisfy; the slightest penetration will suffice. But without an entry, no burglary has occurred." (*Magness, supra*, 54 Cal.4th at p. 277.) In contrast to the factual scenario in *Valencia* where the defendant had removed a window screen and attempted to open the window, the *Magness* court focused on the fact that because the defendant had opened the garage door with a remote control, there had been no "entry" because there was no evidence any tools or part of the defendant's body had "penetrated the outer boundary of the residence." (*Id*. at p. 278.) It is simply not a rational reading of the language in *Magness* that "something that is outside must go inside for an entry to occur" as implicitly overturning *Valencia*'s holding that penetration

of the area behind a window screen, however slight, constitutes entry. (*Magness*, *supra*, at p. 274; *Valencia*, *supra*, 28 Cal.4th at p. 15.)

Once we have rejected defendant's attempt to persuade us that the entry element of burglary is not satisfied when a defendant removes a window screen and breaks the outer pane of a double-paned window, all three of his arguments for reversal of the burglary conviction must fail. First, the broken outer pane provides evidence that someone or something penetrated the area behind the window screen, and so there is sufficient evidence to support the burglary conviction. Second, because the primary holding of *Valencia* remains intact, the court correctly instructed the jury that "a person enters a building if some part of his or her body penetrates the area inside the building's outer boundary. A building's outer boundary includes the area inside a window screen." Third, the court was not required to instruct the jury on attempted burglary because the facts are sufficient to support a finding of the greater offense of burglary, and there is no evidence the lesser offense was committed.

C. Petition for Disclosure of Juror Information

Defendant contends the trial court abused its discretion in denying his petition to disclose juror information. We disagree.

After the court records a jury's verdict in a criminal case, the court places the jurors' personal identifying information, such as names, addresses, and telephone numbers, under seal. (Code Civ. Proc., § 237, subd. (a)(2).) A defendant may seek access to this information when it is necessary for him or her "to communicate with jurors for the purpose of developing a motion for new trial or any other lawful purpose." (Code Civ. Proc., § 206, subd. (g).) The petition must be supported by a "declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information." (Code Civ. Proc., § 237, subd. (b).)

When juror information is sought to support a motion for new trial based on juror misconduct, a defendant must make a sufficient showing of facts that would support a

reasonable belief that jury misconduct occurred, and that further investigation is necessary to provide the court with adequate information to rule on a motion for new trial. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 990.) The showing may not be based on speculation that would allow a defendant to "engage in merely a fishing expedition." (*People v. Wilson* (1996) 43 Cal.App.4th 839, 852.) Denial of a petition for disclosure of juror information is reviewed under the deferential abuse of discretion standard. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1097-1098; *People v. Santos* (2007) 147 Cal.App.4th 965, 978.)

Defendant's petition for disclosure of juror information included a declaration by counsel that an investigator was able to contact some jurors to inquire whether they would be willing to be interviewed, and that one juror who was interviewed "stated to the investigator that the jury discussed defendant's decision not to testify. She stated that this did not affect her decision." Counsel's declaration stated that not all jurors could be located, but did not identify how many had been located, and how many of those agreed to be interviewed. At a hearing on April 14, 2015, defense counsel explained that there were two jurors who had not been contacted, and counsel needed extra time to obtain more specifics from the juror who had been interviewed. The court granted a continuance to May 12, 2015.

At the continued hearing, defense counsel conceded that the investigator had not been able to contact the juror for more specific information, but argued she had shown sufficient good cause to warrant a release of juror information. The court found that counsel's previously filed declaration did not provide sufficient detail to make a prima facie showing of good cause, and denied the petition.

The trial court has wide discretion in deciding whether a petitioner seeking access to juror identifying information has made a prima facie case of good cause. Defendant has not shown that the court abused its discretion here. The declaration submitted by defense counsel was extremely general and the trial court could reasonably conclude it does not satisfy the requirements for a good cause showing.

DISPOSITION

The judgment and the court's postconviction order denying the petition for disclosure of juror information are affirmed.

KRIEGLER, Acting P. J.

We concur:

BAKER, J.

KUMAR, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.